IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6735 of 1998

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIDEOCON INTERNATIONAL LTD - Petitioner(s)

Versus

VRAJMOHANSINH L TOMAR & 1 - Respondent(s)

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Appearance :

MR KM PATEL for Petitioner No(s).: 1.

MRS SANGEETA N PAHWA for Respondent No(s).: 1.
RULE SERVED for Respondent No(s).: 2.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 05/08/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the award dated 15.05.1998 passed by the Labour Court, Ahmedabad in

References (LCAD) No. 63/1994 and 64/1994, whereby the Labour Court has allowed the references by setting aside the order of suspension pending inquiry passed against the respondents on 19.09.1993 and directing the petitioner to pay full wages for the period of suspension till the respondents were dismissed from service pursuant to the inquiry held against them.

2.0 The brief facts of the case are that the respondents herein were employed by the petitioner Company. They were issued with charge-sheets dated 18.09.1993 on the ground of gross and serious misconduct. Therefore, pending inquiry, they were placed under suspension.

2.1 In the departmental inquiry held against the respondents, the charges were proved, and therefore, they were given Show Cause Notices against the proposed penalty of dismissal from the service. Ultimately, they came to be dismissed from service vide orders dated 22.04.1994.

2.2 Against the said orders, the respondents raised industrial dispute, which, ultimately, culminated into a reference being Reference (LCA) No. 1709/1994 and

1710/1994. Both the references are presently pending before the Labour Court, Ahmedabad.

2.3 In the meanwhile, the Gujarat Mazdoor Panchayat purporting to represent the respondents workmen raised demand by its letter dated 15.10.1993 for withdrawal of the said orders of suspension. Pursuant to that demand, references came to be made to the Labour Court being References (LCAD) No. 63/1994 and 64/1994 for setting aside the orders of suspension dated 18.09.1993.

2.4 The Labour Court, after hearing the parties and after considering the documents on record, passed the impugned award. Hence, this petition.

3.0 Mr. KM Patel learned advocate for the petitioner has contended that the Labour Court could not have set aside the orders of suspension on the ground that the petitioner has not paid the subsistence allowance to the respondents workmen. He has submitted that the petitioner had paid the subsistence allowance to both the workmen during the period of suspension as per the Model Standing Orders.

3.1 Mr. Patel has further submitted that even if it is presumed that the respondents were not paid subsistence allowance, the same will not vitiate the order of suspension, since the appropriate remedy available to the respondents in that case would be to file Recovery Application for claiming the same. He has, therefore, submitted that the impugned award of the Labour Court is illegal and perverse and deserves to be quashed and set aside.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. The respondents were guilty of misconduct for which they were issued with charge-sheets and show cause notices and having regard to the seriousness of misconduct for which inquiry was decided to be held, the respondents were placed under suspension. After holding inquiry, the respondents were dismissed from the service. It be noted that the said orders of dismissal is a subject matter of Reference which is still pending before the Labour Court.

4.1 Since the respondents workmen have already been paid the subsistence allowance, the Labour Court by canceling the suspension orders, has traveled beyond the scope of

the term of reference. By entertaining the reference, it has exercised jurisdiction which was not vested in it. In that view of the matter, the impugned award of the Labour Court deserves to be quashed and set aside.

5.0 For the foregoing reasons, the petition is allowed. The impugned award dated 15.05.1998 passed by the Labour Court, Ahmedabad in Reference (LCAD) No. 63/1994 and 64/1994 is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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